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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

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|---|---|-------------------------|
| In re: |) | |
| |) | Chapter 11 |
| BED BATH AND BEYOND INC., <i>et.al.</i> , |) | |
| |) | Case No. 23-13359 (VFP) |
| Debtors. ¹ |) | |
| |) | Jointly Administered |

**SUPPLEMENTAL LIMITED OBJECTION OF RAINIER COLONY PLACE
ACQUISITIONS, LLC TO ASSUMPTION AND ASSIGNMENT OF NON-
RESIDENTIAL REAL PROPERTY LEASE AND RESERVATION OF RIGHTS**

Rainier Colony Place Acquisitions, LLC (“**Rainier**”), by and through their undersigned counsel, respectfully submit this supplemental limited objection and reservation of rights (the “**Supplemental Limited Objection**”) with respect to the *Limited Objection of Rainier Colony*

¹ The last four digits of Debtor Bed Bath & Beyond Inc., tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtor’s claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of the Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

Place Acquisitions, LLC to Assumption and Assignment of Non-Residential Real Property Lease and Reservation of Rights [docket # 1309] and the *Notice of Assumption of Certain Unexpired Leases* [docket #1157] (the “**Assumption Notice**”) filed by the above-captioned debtors (the “**Debtors**”) in the above-captioned cases (collectively, the “**Debtors**”). In support of this Supplemental Limited Objection,² Rainier respectfully represents:

Background

1. On April 23, 2023 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, as amended (the “**Bankruptcy Code**”).

2. As of the date hereof, Rainier (as successor-in-interest to Colony Place Plaza, LLC) is the owner of certain nonresidential real estate commonly known as Colony Place, located at Routes 3 and 44 in Plymouth, Massachusetts (the “**Property**”). Rainier as lessor and the Debtor Bed Bath & Beyond, Inc. (“**BBBY**”) as lessee are parties to a that certain lease agreement dated as of December 23, 2004 (as amended from time to time, the “**Lease**”), pursuant to which BBBY leases 20,098 square feet of nonresidential real property (the “**Premises**”) located at the Property. The Lease is a lease “of real property in a shopping center” within the meaning of section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990).

3. On May 22, 2023, the Court entered the *Order (I) Establishing Procedures to Sell Certain Leases, (II) Approving the Sale of Certain Leases, and (III) Granting Related Relief* [docket no. 422] (the “**Lease Sale Procedures Order**”). Among other things, the Lease Sale Procedures Order approves certain procedures with respect to the Debtors’ potential sale of its leases.

² Capitalized terms used herein but not defined shall have the meaning ascribed to them in the Court’s order approving bidding procedures [docket #92] (the “**Bidding Procedures Order**”).

4. On June 13, 2023, the Debtors filed the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [docket # 714] (the “**Potential Assumption Notice**”), in which the Debtors stated the cure cost associated with the assumption of the Lease was \$0. On June 23, 2023, Rainier filed the *Limited Objection of Rainier Colony Place Acquisitions, LLC To Notice of Potential Assumption and Assignment of Non-Residential Real Property Lease and Reservation of Rights* [docket no. 932] (the “**First Objection**”) in which Rainier asserted that the proposed cure amount for the Lease was at least \$4,817.44, and reserved all rights to supplement the asserted cure amount. In the First Objection, Rainier also reserved all rights to object to a potential assignee of the Lease following an auction.

5. On June 19, 2023, the Debtors’ conducted an auction (the “**Auction**”) with respect to certain of its non-residential real estate leases for which it had received qualifying bids. Thereafter, on June 30, 2023, the Debtors filed the Assumption Notice, which provides that pursuant to the Lease Sale Procedures Order, the Debtors intend to assume and assign the Lease to Burlington Coat Factory Warehouse Corporation (“**Burlington**”). *Assumption Notice*, p. 13. On Exhibit A to the Assumption Notice, at number 1044, the Debtors listed the Proposed Cure Amount associated with assumption of the Lease at \$0.

Supplemental Objection

6. On July 11, 2023, Rainier filed the First Objection, which is incorporated in its entirety by reference hereto.

7. As noted in the FirstObjection, Rainier (as successor to Colony Place Plaza, LLC) as lessor and The TJX Companies, Inc. (“**TJX**”) as lessee are parties to that certain Lease Agreement dated as of December 10, 2018 (as amended from time to time, the “**TJX Lease**”), pursuant to which TJX leases certain nonresidential real property located at the Property.

8. The Debtors' assumption and assignment of the Lease to Burlington may cause Rainier to be in violation of the exclusivity provisions of the TJX Lease (the "**Exclusivity Provisions**") set forth in Schedule B, Section 4(A)-(C), which provides TJX with certain exclusivity rights, and among other things, expressly prohibits Burlington from becoming a tenant at the Property.

9. TJX is a necessary party to these proceedings and is entitled to notice of the proposed assignment of the Lease to Burlington because such assignment appears to affect TJX's rights.

Reservation of Rights

10. Rainier reserves all rights to amend, modify and/or supplement the First Objection and the Supplemental Limited Objection, including with respect to the proposed assumption and assignment of the Lease, the lease sale processes, Rainier's asserted cure amount, and the adequacy of any future performance under the provisions of Section 365(b)(3) provided by Burlington, any back up bidder, or any future bidder.

WHEREFORE, Rainier respectfully requests that the Court (a) sustain the First Objection and the Supplemental Limited Objection; (b) condition the Debtors' assumption and assignment of the Lease to Burlington upon: (i) notice to TJX; (ii) payment to Rainier of its asserted cure amounts as set forth herein, as well as any additional amounts which have accrued under the Lease prior to the date upon which the Lease may be assumed and assigned to Burlington; and (iii) the provision of adequate assurance of future performance to Rainier, including without limitation, Burlington's procurement of a waiver from TJX with respect to the Exclusivity Provisions, and such additional adequate assurance as required by Bankruptcy Code section 365(b)(3); and (c) grant such other relief as is just and proper.

Dated: July 17, 2023

CIARDI, CIARDI & ASTIN

By: /s/ Nicole M. Nigrelli

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